

Final Order Denying Refund: 04-20210044
Gross Retail Tax
For the Tax Year 2019

NOTICE: IC § 4-22-7-7 permits the publication of this document in the Indiana Register. The publication of this document provides the general public with information about the Indiana Department of Revenue's official position concerning a specific set of facts and issues. The "Holding" section of this document is provided for the convenience of the reader and is not part of the analysis contained in this Final Order Denying Refund.

HOLDING

The Department did not agree that Indiana Transportation Business was entitled to a refund of sales tax paid on the purchase of a truck; the truck was purchased in another state and the tax paid to that state.

ISSUE

I. Gross Retail Tax - Sales Tax Paid in Another State.

Authority: IC § 6-2.5-1-27; IC § 6-2.5-2-1; IC § 6-2.5-3-5; IC § 6-2.5-5-27; [45 IAC 2.2-5-10](#).

Taxpayer argues that it is entitled to a refund of sales tax paid on the purchase of a truck used in its transportation business.

STATEMENT OF FACTS

Taxpayer is in the business of providing hauling services. According to Taxpayer, it hauls "general freight" on behalf of third parties. Taxpayer purchased a pick-up truck from an Illinois dealer. Taxpayer paid the Illinois dealer for the price of the truck along with approximately \$3,700 in "licenses, title, and taxes."

Taxpayer titled the pick-up truck in Indiana. At the time of doing so, it paid the Bureau of Motor Vehicles ("BMV") sales tax and was given credit for the tax amount originally paid to Illinois. The amount of the credit allowed was approximately \$3,000.

Taxpayer thereafter determined that it was entitled to purchase tangible personal property - such as the pick-up truck - without paying sales tax because it was engaged in an exempt activity, providing public transportation. Taxpayer submitted a request for a refund of the \$3,700 in sales tax.

The Indiana Department of Revenue ("Department") reviewed the request and denied Taxpayer's request. In a letter dated April 2021, the Department explained stating that "Tax was paid to Illinois not to Indiana and no proof of tax paid to Indiana."

Taxpayer disagreed with the Department's decision and submitted a protest to that effect. An administrative hearing was conducted by telephone during which Taxpayer's representative explained the basis for that protest. This Final Order Denying Refund results.

I. Gross Retail Tax - Sales Tax Paid in Another State.

DISCUSSION

The issue is whether Taxpayer has established that it is entitled to a refund of the \$3,700 tax paid Illinois.

Indiana imposes an excise tax called "the state gross retail tax" (or "sales tax") on retail transactions made in Indiana. IC § 6-2.5-2-1(a). A person who acquires property in a retail transaction (a "retail purchaser") is liable for the tax on the transaction. IC § 6-2.5-2-1(b).

In general, purchases of tangible personal property are subject to sales tax. [45 IAC 2.2-5-10\(a\)](#). Tangible personal property means personal property that: (1) can be seen, weighed, measured, felt, or touched; or (2) is in any other manner perceptible to the senses. IC § 6-2.5-1-27.

However, Indiana offers a sales tax exemption for property purchased for use in providing public transportation. IC § 6-2.5-5-27(a) which states:

Except as provided in subsection (b), transactions involving tangible personal property and services are exempt from the state gross retail tax, if the person acquiring the property or service directly uses or consumes it in providing public transportation for persons or property.

In Taxpayer's case, the pick-up truck was purchased and delivered in Illinois. Taxpayer paid the Illinois truck dealer Illinois sales tax. Thereafter, Taxpayer titled the pick-up truck in Indiana. At that time, the BMV assessed Indiana tax but provided Taxpayer a "credit" for the amount of tax paid Illinois as called for in IC § 6-2.5-3-5 which provides:

A person is entitled to a credit against the use tax imposed on the use, storage, or consumption of a particular item of tangible personal property equal to the amount, if any, of sales tax, purchase tax, or use tax paid to another state, territory, or possession of the United States for the acquisition of that property.

In this case, there is no Indiana sales tax which can be refunded Taxpayer. When Taxpayer purchased the pick-up truck, it paid Illinois sales tax and not Indiana sales tax. There is nothing in Indiana law which suggests that the credit allowed under IC § 6-2.5-3-5 is a "refundable credit." If there is a refund of tax to be had, it is between Taxpayer and the state of Illinois.

FINDING

Taxpayer's protest is respectfully denied.

May 26, 2021

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